through IV, an application shall not be accepted for processing without payment of the fee for such application according to the category determined by the authorized officer; however, when payment is made, the application may be processed and, if proper, the grant or temporary use permit issued. The authorized officer shall make any refund or other adjustment directed as a result of an appeal.

(b) Where an appeal is filed for an application determined under § 2808.2–2(a) of this title to be in Category V or for a related cost reimbursement determination under § 2808.3–1 (e) through (g) or § 2808.5(d) of this title, processing of the application shall be suspended pending the outcome of the appeal.

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43 CFR Parts 2800 and 2880

[Circular No. 2595; AA–330–07–02–NCPF–2410]

Rights-of-Way, Principles and Procedures; Rental Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends Parts 2800 and 2880 of Title 43 of the Code of Federal Regulations to provide a rental schedule for most linear rights-of-way granted under section 28 of the Mineral Leasing Act of 1920, as amended and supplemented, and title V of the Federal Land Policy and Management Act of 1976. The rental schedule contained in the final rulemaking is based on the following three factors: (1) A typical valuation of lands currently occupied or expected to be occupied by linear right-of-way grants, using county boundaries and zones varying by $100 increments (one $50 zone); (2) the estimated impacts of each type of right-of-way grant on land utilization divided into two groups of right-of-way types; and (3) an interest rate for converting the valuation to a basic dollar per acre annual rental for each land value zone and right-of-way group. In order to keep this initial rental schedule current, it would be adjusted each year using the annual change in the Gross National Product Implicit Price Deflator Index. The final rulemaking also provides that existing linear right-of-way grants not covered by the rental schedule may be brought under it upon reasonable notice to the holder. In addition, the final rulemaking is designed to substantially reduce the need for individual appraisal or rentals for new linear right-of-way grants, establish consistent rationale for determination of rental, reduce the differences between procedures presently used by the U.S. Forest Service and the Bureau of Land Management, resolve conflicts which have led to numerous appeals of rental determinations and reduce both governmental and industrial administrative costs. Finally, the final rulemaking establishes procedures for site type right-of-way grants, such as communication sites, where there is competitive interest, and rent in the form of a royalty or a fixed percentage of the holder's gross receipts might be appropriate.

EFFECTIVE DATE: August 7, 1987.

ADDRESS: Suggestions or inquiries should be submitted to: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION: The proposed rulemaking amending procedures for determination of annual rentals for right-of-way grants and temporary use permits was published in the **Federal Register** on September 5, 1986 (51 FR 31886), with a comment period that closed on October 20, 1986. A total of 49 comments were received: 12 from businesses engaged in the oil and gas industry; 12 from electric and telephone firms; 6 from industry associations; 8 from Federal agencies; 4 from municipal service districts; 4 from individuals; 2 from miscellaneous businesses; and 1 from a large land owner. The comments and the action taken on them are discussed below.

Use of a Schedule

Most of the comments favored use of a schedule primarily because of: (1) The long term certainty provided by a schedule approach; and (2) the administrative convenience, including cost savings both to the Bureau of Land Management and the applicant/holder. A few of the comments expressed the view that the rent for each right-of-way grant should be determined by an individual appraisal. One comment suggested that all types of right-of-way grants be subject to a schedule. After the effective date of this final rulemaking, a schedule will be used for most linear right-of-way grants and temporary use permits issued by the Bureau. The formula developed to calculate the annual rental fee is:

1st year—Rental fee (Base) = Right-of-Way Zone Value × impact adjustment × interest rate × number of acres impacted.

2nd year and thereafter—Rental fee = Rental base × annual index.

Zones

In the Notice of Intent to Propose Rulemaking published in the **Federal Register** on January 18, 1985 (49 FR 2697), the Bureau of Land Management proposed development of zones for individual right-of-way types or groups. The comments were favorable on use of a zone concept approach and this concept has been used in this final rulemaking.

In developing the zones that are used in the proposed and final rulemakings, the Bureau of Land Management, in cooperation with the U.S. Forest Service, reviewed the typical raw land values for the types of lands administered by the two agencies that have in the past been occupied by linear rights-of-way, and under existing plans will be occupied by such rights-of-way in the future. The zones contained in the proposed rulemaking were based on an administrative selection of typical or blended values of agency land by county. Zones of general value in areas of substantial size can be established only through a process of blending the several different values of lands. For any zone there are almost certain to be higher or lower value lands. The zone value and the zone boundaries are judged to be accurate reflections of the general or blended value of the lands in the zone. These values were mapped, reviewed and adjusted, resulting in the placement of each county (except Coconino County, Arizona, which is split by the Colorado River), in one of eight zones ranging in value from $50 to $1,000 per acre.

These right-of-way zones are not based on values for urban or suburban residential areas, industrial parks, farms or orchards, recreational properties, or such types of land. Since the Bureau of Land Management plans to avoid authorizing linear right-of-ways through attractive public use areas such as lakeshores, streamsides, and scenic highway frontages, the value zones do not reflect these types of land values. Also, zone values do not reflect the land value of private lands or other ownerships, unless the lands are comparable with the lands typically occupied by a right-of-way grant under permit from the Bureau of Land Management.

Specific sites within the zones may have actual values higher or lower than the value assigned to the zone, and zones have been established by State and County jurisdiction for administrative convenience.

Also, the value of timber is not included in the value assigned to the zones, because the timber usually is paid for separately and removed when the right-of-way is cleared.

Most of the comments supported the use of a county zone system based on blended land values, while nearly all of the comments objected to any use of a "going rate" value, although one comment specifically recommended use of the "going rate."

A few comments suggested that the final rulemaking use zones based on other than county boundaries, such as vegetation types, or precisely identified land value zones. The adoption of this suggestion would be contrary to the simplified zone-schedule concept set forth in the proposed rulemaking and the suggestion has not been adopted by the final rulemaking.

Numerous comments were received on the individual zone or county blended values used in the proposed rulemaking. Most of the comments had some questions about individual areas, but accepted the values overall. Some were specific as to the value of a county or counties, some simply questioned the value of a county or group of counties. The comments raised specific questions about Clark County, Nevada and Big Horn, Crook, Hot Springs, Washakie, and Weston Counties, Wyoming. After carefully reviewing all data on the counties, it was determined that Clark, Hot Springs, and Washakie Counties were placed in value zones that were too high. This same review indicated that Big Horn, Crook, and Weston counties had been placed in appropriate zones. In keeping with the original intent of minimizng the number of zones, the zone designations attached to this final rulemaking have changed Hot Springs and Washakie Counties to the adjacent $100 zone and adjusted Clark County to a $50 zone.

The zone values utilized for setting the per acre rental in the rental schedule in the final rulemaking will not be changed unless a review of the cumulative change in either of two indexes (one-year Treasury Rate Index and Gross National Product Implicit Price Deflator Index) used as the basis of the rental schedule would require a change in the regulations to change the rental schedule. The two indexes and their use is discussed in the section on Rental Formula Review in this preamble. Any change in the rental schedule would be made through the rulemaking process—issuance of a proposed rulemaking with an opportunity for public review and comment, followed by the issuance of a final rulemaking.

Adjustments to Zone Values

The proposed rulemaking contained two groups of rights-of-way with different adjustments to the zone values to reflect the lessened impacts of each type of right-of-way on land utility. The proposed rulemaking provided for one group which covers oil and gas and other energy pipelines, roads and ditches, and canals and would adjust the zone values for that group by 20 percent. For the second group, covering electric and telephone lines, nonenergy pipelines, and other linear rights-of-way, the proposed rulemaking would adjust the zone value 30 percent, indicating a lesser impact on land utilization. As with zone values, the concept sought to limit groups of right-of-way types rather than provide a number of different group types with only minor differences in percentage adjustments. This concept was formulated with direct input from users, user groups, and trade associations in meetings held in early 1986.

While many of the comments on the proposed rulemaking supported the use of the concept presented in the proposed rulemaking, a number of comments objected to the grouping of oil and gas pipelines with the more intrusive ditches, canals and roads, suggesting oil and gas pipelines be: (1) Included with electric and telephone lines with a 30 percent impact adjustment; or (2) placed in a 40 percent impact adjustment category. Most of the comments from western utilities, while accepting the two group concept, suggested that a distinction be made between transmission and distribution (35 kv and under) lines. The comments also suggested that distribution lines be given an 85 percent impact adjustment.

Many of the comments that suggested the final rulemaking provide a larger impact adjustment referred to market conditions in the purchase of such easements from private landowners. This suggestion has not been adopted by the final rulemaking because a policy decision of the Department of the Interior specifically excluded the use of market conditions, as reflected in the proposed rulemaking. In addition, many of these comments point out that rights-of-way for electric distribution lines and like systems can be obtained at no or minimal cost due to the benefits received by the private landowner as a result of having the use of the utility. While it may be true that the private landowner may benefit from this system, this same benefit is not generally applicable to agencies that have jurisdiction of public lands. Under management directives given the agencies by Congress, the benefit of the availability of utilities does not normally inure to the public lands.

Upon review of the proposed rulemaking and the comments, the final rulemaking has adopted the 20 percent impact adjustment provision for oil and gas and other energy related pipelines. In the interest of limiting the number of groupings, canals, ditches, and roads will be included in the grouping with oil and gas and related energy pipelines, rather than creating a new grouping for canals, ditches, and roads with a 10 or 15 percent impact adjustment.

While agreeing that electric distribution lines (those up to 35 kv) are less intrusive than electric transmission lines, this is primarily a function of the size (width) of the right-of-way grant needed. The schedule contained in the proposed and final rulemaking accommodates the width difference with the acreage figure in the formula used to determine rentals. Had a decision been made to use a procedure that used a "going rate" approach of a value per pole, for instance, this difference would have warranted a separation between distribution and transmission type facilities.

The western utilities in their comments on earlier proposals and this proposed rulemaking contended that rentals should be reduced or eliminated for rights-of-way for gas or electric or distribution lines which provide service to the United States, its lessees or permittees, or residential or agricultural customers because it provides a public benefit/service. The rental fee schedule provided in the proposed and final rulemakings will be applicable only when holders are required to have a right-of-way and pay rental under existing law and regulations. Distribution lines whose sole purpose is to serve an agency of the United States may qualify for a reduction or waiver of rental under the provisions of the rulemakings. However, in those instances where the distribution lines are provided to serve a lessee or permittee on public lands, this service is provided because said lessee or permittee requested it and the utility applied for a right-of-way grant across public lands to provide that service, a service that is charged to the user and provides income to the utility. The right-of-way grants made in the latter instance require the payment of rental.

On a related issue, the comments suggested that it would be unfair to require that the rental for service to lessees and permittees located at a distance from existing service be shared by all of their users—rather such rental costs should be paid by the lessee or permittee needing the service. Since the utility applies for and holds the right-of-way grant on the public lands, it is responsible for that grant and the required rental. The resolution of this issue is not within the purview of the authority of the Bureau of Land Management, but should be worked out between the utilities and the appropriate State public utilities commission under procedures it provides for service charges.

In addition to the above issues raised in their comments, some of the utilities raised the point that based on the clear difference between transmission and distribution right-of-way easements, and on the need for cost-effective administration, that:

- Federal distribution easement valuation should be based on typical industry practices relating to the extent of the rights required.
- Federal distribution easements should be consolidated into one master agreement for each Forest Service or Bureau of Land Management district, to assure cost-effective administration.
- Because of the negligible market value of Federal distribution easements, right-of-way rental fees should be based solely on an administrative cost schedule.

The following information was presented in the comments as the basis of the three recommendations made above:

- Utilities should not be compelled to pay more for distribution easements on Federal lands than they pay on private lands. The proposed rulemaking focuses on transmission easement valuation based on rights far in excess of those commonly required for a distribution line. The net effect is utilities pay excessive fees for the use of easements on Federal lands.
- Administration of low value easements on Federal lands is more costly than revenue generated by the fees for those easements. Applying the annual rental formula provided in the proposed rulemaking to zone 5 ($500/ac), the projected annual rental for a mile of distribution line is $20/mile. This would not offset the annual cost incurred by the United States in administering the easement.
- Distribution easements on private lands—based on rights required—are valued at a 10 percent fee value.

The first recommendation asked that easements for distribution lines be valued by sales information based on what industry is paying for similar rights on private lands. This is what is commonly called the "going rate method", a concept that was dropped from consideration in the proposed rulemaking in response to recommendations from industry that the rental schedule be based on the value of the lands crossed by the right-of-way grant.

The land value method was used as the basis for developing the rental schedule contained in the proposed and final rulemakings. Since the rental schedule includes all lands which are nominally expected to be occupied by right-of-way grants under the jurisdiction of the Bureau of Land Management and lands in the National Forest System, the value zones used were created to reflect unit values. The zone values are a blend of higher and lower values that have been combined for administrative simplicity and economic efficiency. For this same reason, the impact adjustment factors of 20 and 30 percent were considered also to be a blend of higher and lower factors and if more categories are created, the original factors would also have to be changed to reflect the removal of part of the original factors.

The comments pointed out that the March 19 response of the agencies to the concerns raised by the utilities in their discussions with the agencies did not address the distribution vs transmission concerns raised by the utilities. What was not pointed out in the comments was that the impact adjustment recommended by the agencies was 0 and 20 percent at the time of the response and not the 20 and 30 percent set forth in the proposed rulemaking. It was during the series of meetings between the agencies and industry representatives that an approach was outlined which resulted in an administratively simple and economically efficient method in determining rental values. Part of the consideration given for arriving at the impact adjustments was the issue of transmission vs distribution, not only for electric systems, but also for oil and gas systems.

The agencies agree that for the most part industry acquires distribution line right-of-way easements at no cost or at a very nominal cost. However, as pointed out earlier in this preamble, these are granted by private landowners who benefit from having the lines located on their property. During the joint market survey conducted by the Bureau of Land Management and the U.S. Forest Service, it was found that in the western part of the United States, 77 percent of the non-benefitting private landowners charged for easements on their lands. It is the practice of both agencies to waiver fees for facilities that exclusively serve the United States. However, it needs to be emphasized that most right-of-way easements across the public lands are not for the purpose of solely serving the United States.

After careful review of the comments, it was concluded that the valuation process provided in the proposed and final rulemakings provides due consideration to distribution lines and that the rental schedule structure of only two categories meets and supports the objective of developing an administratively simple and economically efficient approach to determining rental value.

The second recommendation discussed above was that distribution easements should be consolidated into one master agreement for each Bureau of Land Management and Forest Service district to assure cost effective administration. This recommendation has both benefits and detriments. Each line, whether it is a new addition, a modification, or termination, must be examined due to, among other requirements, agency land use plans, the National Environmental Policy Act, and title V of the Federal Land Policy and Management Act. Use of a single master file could complicate, rather than ease, administrative efficiency. The utility companies are encouraged to discuss implementation of such a master approach with the appropriate Bureau or Service District office to determine if some agreement can be reached. In any event, the Bureau will use a consolidated billing system for each State when this rental schedule is fully implemented by the final rulemaking.

In response to the third recommendation discussed above, the rental schedule set forth in the proposed and final rulemaking is an administratively developed schedule as opposed to a detailed appraisal being required for each right-of-way grant.

For the reasons set out above, the final rulemaking has made no change in the right-of-way type groupings or in the adjustment to the zone value provided in the proposed rulemaking.

Annualization

The proposed rulemaking provided a per acre annual rental that resulted from multiplying the adjusted zone value in the schedule by the 1-year Treasury Securities "Constant Maturity" rate (7.07 percent was used in the proposed

rulemaking). The comments on this point were generally supportive. Some of the comments indicated a preference for use of a rate more closely aligned with the real estate market, but were willing to accept the 1-year rate concept of the proposed rulemaking. Some of the comments requested that the rate be a fixed rate that remained in effect until there was a plus or minus 50 percent change in the three year average. As with the zone values and impact adjustment, the figures in the rental schedule are used for the purpose of setting the first years rental rate, which will remain fixed until adjusted under the procedure outlined under Rental Formula Review, discussed later.

In connection with required reviews of the entire schedule and required annual adjustments, a number of the comments suggested use of second quarter data rather than third quarter data to allow additional time to review and budget for changes resulting from the changes. The final rulemaking has adopted these changes and will provide for the per acre rental by zone to be annualized by applying the 1-year Treasury Securities "Constant Maturity" rate for June 30 (6.41 percent for June 30, 1986), as published by the Federal Reserve in statistical release report H.15 (519).

Annual Indexing

The provisions of the proposed rulemaking provided that the per acre rental would be adjusted each year based on the third quarter's change in the Gross National Product Implicit Price Deflator Index as published in the "Survey of Current Business" of the Department of Commerce, Bureau of Economic Analysis. Comments on this issue ranged from support of the provisions of the proposed rulemaking, to support of the use of a different index, to holding rentals level without adjustment for a five-year period.

Several of the comments suggested the use of the Implicit Price Deflator Index for the Gross Private Domestic Investment-Nonresidential Fixed Index. In further research of the question of which of the indexes to use, the Department of Commerce was consulted and recommended the use of the broader based Gross National Product Implicit Price Deflator. This index provides sufficient stability while accurately reflecting total economic change. Both the Consumer Price Index and the Farm Real Estate Values were considered or discussed as the index that should be used, but both had been previously excluded from further consideration.

The final rulemaking utilizes the Gross National Product Implicit Price Deflator Index as provided in the proposed rulemaking for the purpose of making the annual adjustment of the per acre rental schedule.

The comments also suggested that in order to facilitate budgeting and related actions for the Bureau of Land Management, the U.S. Forest Service and the holder that the end of the second quarter be used as the basis for the adjustment of the rental per acre schedule. The Gross National Product Implicit Price Deflator Index is published on a quarterly and annual basis. As suggested in some of the comments, the final rulemaking has adopted the second quarter index rather than the third quarter index provided in the proposed rulemaking.

A few comments suggested that the table showing the rental per acre by State and county be published each year in the **Federal Register**. This suggestion would result in unnecessary costs. With the change to use of the second quarter index, new tables will be prepared and be available from the Bureau of Land Management field offices by the end of the third quarter. The new tables will normally be available by October 1 of each year.

Rounding of Annual Rental

The proposed rulemaking provided that the mathematical calculation for the rental for the ensuing year be rounded to the nearest dollar; amounts between $0.01 and $0.50 would be dropped. This provision of the proposed rulemaking has been adopted by the final rulemaking without change.

One Acre Minimum Requirement

The proposed rulemaking provided that the rental for a right-of-way grant embracing less than one acre would be calculated as if it embraced a full acre for administrative simplicity. While a number of the comments supported this provision, one comment objected to it on the basis that it held a number of right-of-way grants that were less than one acre in size. This comment recommended that the final rulemaking remove the minimum provision and provide that the acreage of a right-of-way grant be calculated/estimated to two decimal points. After review of this provision and the comments, the final rulemaking has deleted the minimum requirement because the minimum can result in excessive rentals under certain circumstances. However, the final rulemaking has not adopted the suggestion that right-of-way grants be figured to two decimal points because that could result in survey costs to the holder that might be more than would be saved with such detailed calculations. However, in those instances where the detail needed to figure the acreage to two decimal points is available to the Bureau of Land Management, it will calculate acreage to two decimal points; otherwise the acreage will be calculated to a tenth of an acre.

Calendar Year Rental Period

Under existing regulations, the rental period for a right-of-way grant issued by the Bureau of Land Management is the anniversary date of the individual right-of-way grant. Upon full implementation of the procedures provided by the proposed and final rulemakings, all right-of-way grants would have a calendar year rental period. All of the comments on this point were supportive of this process, with a few comments suggesting some clarifying language which was adopted by the final rulemaking.

In converting existing right-of-way grants to a calendar year billing period, the conversion year rental will be prorated by the months remaining in the calendar year against a full year's rental, i.e., if three months remain in the rental period being converted, the rental would be 3/12 of the annual rental.

Consolidated Billing

As part of the change to a calendar year billing period made by the proposed rulemaking, the Bureau of Land Management would provide a single consolidated annual billing to entities holding more than one right-of-way grant within a given State. If an entity holds right-of-way grants in more than one State, a separate billing will be issued for each State in which a right-of-way grant is held. This would ease administrative workloads and provide cost savings to right-of-way grant holders. This concept was supported by most of the comments and this consolidated billing process will be implemented by the Bureau when the final rulemaking becomes effective and grants have been converted to the calendar year rental period. The Bureau expects to have all linear right-of-way grants converted to a calendar year billing basis within four years of the effective date of this final rulemaking.

Phase In

The final rulemaking provides that where the fees required for existing right-of-way grants would increase the annual rental by more than $100 and the increase in annual rental would be in excess of 100 percent, only the amount of the new rental in excess of the 100

percent increase would be phased in in equal increments, plus an annual adjustment, over a 3-year period. While most of the comments on this provision were favorable, a few wanted a 5-year phase in, with a few comments suggesting that any increase over 500 percent be phased in over 5 years. A review of Bureau of Land Management right-of-way grant cases indicates that while 10 to 15 percent might meet the initial $100 and 100 percent increase threshold, only a minor percentage would exceed a $100 and 500 percent increase. Therefore, the final rulemaking has adopted the provisions of the proposed rulemaking without change.

Because questions have arisen about how the phase in process provided by the proposed and final rulemakings will work, the following example is provided. Assume a current rental of $100 per year, a new rental of $500 per year, and an annual adjustment using the second quarter change in the index as the basis of the annual indexing (which for this example is plus 2 percent), then the payments would be:

Year	Prior year's payment	100 percent increase first year	⅓ of increase balance	Amount of annual adjustment	Annual rental
First	$100	+$100	+$100	None =	$300
Second	$300	None	+$100	+$10 =	$410
Third	$410	None	+$100	+$10 =	$520

Advance Payments

The proposed rulemaking retained the provisions in the existing regulations allowing: (1) The authorized officer to require multiple year advance payments when the annual rental is less than $100 per year; and (2) allowing the right-of-way grant holder to make advance payments for not to exceed five years, regardless of the amount of the annual rental. Under the provisions of the proposed rulemaking, if a holder exercises the option of paying a five-year advance payment, any adjustment in the annual rental would be deferred and would be adjusted at the beginning of the sixth year. All of the comments on this provision of the proposed rulemaking supported it and expressed the view that it would be beneficial to the user and the Bureau of Land Management. One comment suggested that advance payments should be discounted. The final rulemaking has adopted the provisions of the proposed rulemaking regarding advance payments without change.

Rental Formula Review

In the proposed rulemaking, cumulative changes in two indexes were established which would require a review of all of the elements in the formula used to determine whether the annual indexing was continuing to reflect fair market annual rental or whether there should be a change in the rental schedule to reflect an overall change. The review would be required when either the Gross National Product Implicit Price Deflator Index had a change of plus or minus 30 percent or the change in the 1-year Treasury rate was plus or minus 50 percent. A majority of the comments addressed this issue, with most supporting a review when the Gross National Product Implicit Price Deflator Index had a change of plus or minus 30 percent, with some of those comments suggesting the use of a different index. A number of comments suggested, as was discussed earlier in this preamble, the use of second quarter data rather than third quarter data.

Most of the comments on this provision of the proposed rulemaking objected to the use of a change in the 1-year Treasury rate of plus or minus 50 percent due to its inherent volatility and its failure to reflect actual changes in land values. A few comments suggested that the final rulemaking use a change of plus or minus 50 percent in the 3-year average of the 1-year Treasury rate. Many of the comments on this issue indicated a belief that the occurrence of a change of plus or minus 50 percent in the 1-year Treasury rate woud result in an automatic change in the rental rate, which is not the case. Under the proposed and final rulemaking such a change would result in a review of the rental schedule to determine if an adjustment is justified, not an automatic adjustment. This provision of the proposed rulemaking has been adopted by the final rulemaking with a change providing for the use of the three-year average of the one-year Treasury rate.

The final rulemaking also retains the provision of the proposed rulemaking that a change of plus or minus 30 percent in the Gross National Product Implicit Price Deflator Index will result in a review of the rental schedule contained in § 2803.1–2(c)(1)(i) of this final rulemaking to determine if an adjustment is justified. For both of the indexes, the change will be measured from the second quarter. The three-year average of the one-year constant Treasury rate as of June 30, 1986, was 8.86%. This rate will be compared with the rate as of June 30 of each succeeding year to determine whether a 50 percent change has occurred (the rate has either dropped to 4.43% or risen to 13.31%). The Cross National Product Implicit Price Deflator Index as of June 30, 1986, was 114.0. This figure also will be compared with the figure in the Index as of June 30 of each succeeding year to determine whether a 30 percent change has occurred (the figure has either dropped to 79.8 or risen to 148.2). It is emphasized that when one or the other of the cumulative changes discussed above occurs, market conditions and business practices will be considered in the review to determine whether there have been sufficiently varied changes that would warrant the proposing of a revision to the rental schedule. If a review shows that a revision of the rental schedule is not warranted, the existing formula will continue to be used until another cumulative change sufficient to trigger a review occurs. If a determination is made that a revision of the rental schedule is warranted, a proposed rulemaking with an opportunity for public review and comment will be published.

Exception to the Schedule

Under the proposed rulemaking, non-linear and those linear rights-of-way having "unique" characteristics would be excluded from rental determinations based on the rental schedule. While a few of the comments supported the provisions of the proposed rulemaking, most of the comments raised objections to what they viewed as an "arbitrary" and poorly defined exception, with suggestions that an exception by specifically identified areas or the conditions for an exception be clearly defined by the final rulemaking. One of the definitions suggested in the comments was related to land values, with a suggestion that the basis for an exception be either a threshold of $4,000 to $5,000 per acre or a per acre value that exceeds the zone value by a factor of 10. One comment suggested that any lands that have been substantially improved might be the basis for an exception. A few of the comments were of the view that there should be no exception. One comment on this point suggested that the final rulemaking provide that the rental schedule be applicable to all rights-of-way, both linear and non-linear.

A number of the comments recommended that appraisal standards be provided to cover non-schedule rental determinations, with the cost of a required appraisal paid by the Bureau of Land Management, with all such individual appraisals being reviewed by a qualified appraiser and being subject to the Department of the Interior's administrative appeal process. Another comment on this point suggested that

the applicant/holder be permitted to provide an appraisal with arbitration if there is a dispute about it.

The final rulemaking provides that the authorized officer must use the fee schedule unless the authorized officer determines that a substantial area within the right-of-way grant area or segment thereof exceeds the zone values by a factor of 10 and expected valuation is sufficient to warrant a separate appraisal. The rental schedule shall be used to calculate the fees for the vast majority of linear right-of-way grants and temporary use permits. Once the rental for a right-of-way grant or temporary use permit has been determined by use of the rental schedule, it will remain under the rental schedule until the holder takes some action that would change the grant, i.e., the holder files an amendment to add additional facilities to the existing grant.

Further, it is current Bureau policy to review all appraisals before they are approved for Bureau use and that all appraisals be prepared in accordance with the standards and format described in the "Uniform Appraisal Standards for Federal Land Acquisition" as published by the Department of Justice and/or as may be required by Bureau Manual 9300. Any rental determination based on an exception of the rental schedule is subject to an appeal (See 43 CFR Parts 2804 and 2884).

Other Changes Made by the Final Rulemaking

The proposed rulemaking provided for the removal of the covenant in § 2881.2 of the existing regulations which requires the right-of-way holder to modify, adapt, or discontinue any oil and gas pipeline use determined to be in conflict with a public use of the public lands. Nearly all of the comments supported this provision of the proposed rulemaking and the final rulemaking has retained it without change. Oil and gas pipeline right-of-way grants can be conditioned through stipulations to address any potential conflicts.

Another change made by the proposed rulemaking was the elimination of the authority of the authorized officer to modify the terms and conditions, other than the bonding provisions, of a right-of-way grant, when an assignment of that grant is made. Again, most of the comments supported this change, with a few making the suggestion that this change not be made applicable to holders who are not required to pay rental. The final rulemaking has not adopted the suggestion that this provision be applicable only to those holders who are paying an annual rental because there is no rationale for this distinction. Right-of-way grants are freely assignable and should not be encumbered with limitations in the absence of convincing reasons.

A third change that would be made by the proposed rulemaking provided for a negotiated fee for multiple assignments in a single action, rather than the fee of $50 per case provided in the existing regulations. Nearly all of the comments supported this change for reasons of equity, and the final rulemaking has adopted this provision of the proposed rulemaking without change.

Reduction or Waiver of Rental

Section 2803.1–2(b) as set forth in the proposed rulemaking provided eight classes or conditions under which the authorized officer is permitted to reduce or waive rentals for a right-of-way grant or temporary use permit. Five of these conditions, subparagraphs 1, 2, 3, and 6, were a restatement of provisions of the existing regulations. Subparagraph 4 was added to provide an exemption from rental payments for facilities financed under the provisions of the Rural Electrification Act as required by Congress in Public Law 98–300. Subparagraph 5 was added by the proposed rulemaking to cover right-of-way grants issued pursuant to Acts repealed by the Federal Land Policy and Management Act, but otherwise subject to the provisions of this proposed rulemaking by the provisions of § 2801.4 of the existing regulations. Finally, subparagraph 7 was added by the proposed rulemaking to cover unique hardship cases. Those making comments on this section were generally supportive.

Four comments on this point suggested that municipal utilities or cooperatives should be excluded from rentals regardless of the fact that their principal source of revenue is from customer charges. This suggested change was based on the view that the Bureau of Land Management has misinterpreted the Federal Land Policy and Management Act, in that it was the intent of Congress to reduce or waive the rental for such municipal utilities. Congress has subsequent to the enactment of the Federal Land Policy and Management Act, considered and rejected a mandatory waiver of rentals for muncipal utilities (See House Report on H.R. 2111, dated September 3, 1983). The adoption of this suggested change by the final rulemaking would create a condition that is unfair and anticompetitive; it would differentiate between municipal and investor-owned utilities, therefore, the suggested change has not been adopted by the final rulemaking.

A number of the comments suggested that public utilities, as a class, be provided reduced rentals, with some of the comments suggesting a total exemption for such utilities. Chief among the reasons given by the comments for their suggestions were that public utilities: (1) Provide for a public need; (2) are required to provide service even though some of that service may not be economic; and (3) are under the control of various governmental authorities. While these contentions may be true, public utilities already are compensated for this by: (1) Being allowed to operate as monopolies; (2) exercising, when needed, certain authorities, i.e., eminent domain, not available to others; and (3) being assured of a minimum return on their investment, a guarantee not generally available to other businesses. Further, a class exclusion or reduction, such as that suggested in the comments, would be unfair to other utilities, who by location, cannot use the public lands for rights-of-way.

After careful review of the reasoning presented in the comments it has been determined that it is reasonable that public utilities, as a class, pay for the use of the public lands and resources. The proposed and final rulemakings provide an opportunity for individual holders to have a specific case considered for a waiver or reduction of the rental.

Some of the comments on the proposed rulemaking objected to the Rural Electrification Act financed utilities, which Congress has exempted from the payment of rental, inclusion in a section giving the authorized officer discretion as to whether to charge or not charge rentals. These comments also suggested that the final rulemaking include all Rural Electrification Act financed facilities.

In response to these comments, the final rulemaking has adopted a change to clarify § 2803.1–2. The change divides the section into two parts and provides the following:

- Right-of-way grants excluded from the payment of rental (the exclusion from rental for Rural Electrification Act financed facilities covers both linear and site type facilities as intended by the provisions of Pub. L. 98–300 (See 132 *Cong. Rec.* S. 14980, October 3, 1986).
- Right-of-way grants where the authorized officer considers a waiver or reduction of rental on a case-by-case basis would be excluded if the rental is waived.

Application of Rental Schedule to Existing Grants

The proposed rulemaking provided that the rental schedule could be applied to:

- Existing right-of-way grants after notice to the holder,
- Right-of-way grants issued with an estimated rental pursuant to section 2803.1-2(b) of the existing regulations, and
- Right-of-way rental adjustment cases that had been appealed to the Office of Hearings and Appeals, Department of the Interior.

A few of the comments supported the provisions of the proposed rulemaking, with others being of the view that the rental schedule provided in the proposed rulemaking should be prospective only, but gave no alternative for use in the setting of the rental for right-of-way grants issued with an estimated rental or for rental cases that had been appealed. Some of the comments objected to applying the rental schedule retroactively to cases where the rental had been paid at the original rental rate or last uncontested rental adjustment, cating Bureau of Land Management Instruction Memorandum 84-190, Change 1, dated November 28, 1986, as the basis for the their view.

One of the comments on this issue categorized cases in the four following groupings:

- Grants issued or rental adjusted in States using the "going rate" method vs States not using the "going rate" method.
- Cases where the "going rate" method was used and the new rental appealed vs no cases involving no appeal.
- Existing rental cases where review of adjustment to rentals has not been made pending the promulgation of appropriate regulations.
- Grants issued with "subject to rental determination" vs those issued without such a provision.

This comment went on to suggest that the final rulemaking provide a differential between new right-of-way grants and situations where there has been a rental adjustment. The comment suggested that the rental schedule should be prospective for those cases involving a rental adjustment. As support for the suggestion, the comment suggested that the retroactive application to rental adjustment cases would require a great deal of administrative effort which would be more costly than what would be realized from the new rentals. The comment also made the point that the equities of this situation lie with those who appealed the use of the "going rate" method with the subsequent Department of the Interior policy decision to use a land value method in adjusting rentals.

Another comment suggested that the rental schedule contained in the proposed rulemaking be applied only to those right-of-way grants where the rental readjustment was based on the "going rate" method and those readjustment cases where under an agreement with Bureau of Land Management State officials, a protest of the rental adjustment was allowed in lieu of further appeal. This comment also suggested that the annual indexing provided by the proposed rulemaking be applicable to the rental for any previous year and where rental was paid without protest or appeal that such rental may not be recalculated, i.e., the rental schedule be applied to existing right-of-way grants only in those instances where the grant specifically provided for a future determination of the initial rental or where a rental adjustment was protested or appealed.

The decision of the Board of Land Appeals, Department of the Interior, that covers this issue is *Northwest Pipeline Corp.* (On reconsideration), 83 IBLA 204 (1984). That decision provided:

> Where the Bureau of Land Management proposed to resolve the conflict and inconsistencies in its appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of February 25, 1920, *as amended*, 30 U.S.C. 185 (1982), the Board will not rule on the legality of the going rate method of appraisal, since the Bureau of Land Management should be allowed to explore the full range of options available in developing the proper appraisal method.
>
> During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, new rights-of-way should not be appraised using the going rate method of appraisal. The Bureau of Land Management should proceed to charge a reasonable estimate of the fair market value subject to subsequent appraisal in accordance with 43 CFR 2803.1-2(b).
>
> During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, reappraisal of existing rights-of-way should be deferred, and the Bureau of Land Management should continue to charge the original rental fee or last uncontested rental fee.
>
> The guidelines in this opinion should be applied during the interim period until an approved appraisal method is adopted. To the extent that the BLM has previously collected rental fees in these and other appealed cases based on the going rate method, or the Department has entered into arrangements for payment in accordance with IM 84-490, our decision does not require refund of those monies. Collected funds should be held in escrow by BLM pending the adoption and application of its appraisal methodology.

In early 1984, the Assistant Secretary—Lands and Minerals Management, in an effort to resolve the rental adjustment controversy, waived the then existing regulations to the extent necessary to allow an applicant to "escrow" the difference in disputed rental adjustments pending decision on those appeals. By Instruction Memorandum 84-490, dated May 12, 1984, the Bureau of Land Management instructed its field offices to include this "escrow" option where a rental redetermination was made involving ten or more right-of-way grants held by a single holder. Upon receipt of the Board of Land Appeals decision in *Northwest* (supra), the Bureau on November 24, 1984, changed Instruction Memorandum 84-490 through the issuance of Change 1 which provided:

> (1) Applicants for new rights-of-way should be charged the minimum rental of $25 for 5 years. The grant is to be made subject to a rental determination at a later date and the express covenant that any additional rental determined to be due as the result of the rental determination shall be paid upon request. (This was further clarified by instructions in Change 2 of Instruction Memorandum 84-490 dated March 15, 1985, ". . . item 1 means that a $25 for 5 years' rental estimate (or deposit) should be collected pending the completion of a rental determination. Once the new rental regulations have been implemented, it will be possible to do a rental determination using the new guidelines and request any additional money that may be due.")
>
> (2) Existing rights-of-way subject to readjustment will be continued at the original rental fee or last uncontested rental fee. Again, the rental payment is subject to review and revision after the new regulations are established.

When this final rulemaking becomes effective, it will be necessary for the Bureau of Land Management to examine each right-of-way grant that is subject to rental to determine whether the case would fall under the rental schedule or the rental determined differently and issue an appropriate rental decision.

After careful review of the proposed rulemaking and the reasoning raised in the comments on that rulemaking, it was determined that the equities of the issue of rental readjustments require the application of the provisions of the proposed and final rulemakings in the following situations:

(1) Prospectively to new right-of-way cases.

(2) Existing right-of-way cases where an estimated rental deposit was collected and the right-of-way provided for a subsequent rental determination (basically those issued since November, 1984).

(3) Existing right-of-way grant cases where the holder appealed a rental adjustment and the decision in Northwest (supra) applies. The Bureau of Land Management considers a case as having been appealed when an appellant right-of-way holder offered and the Bureau agreed to accept a protest to a rental adjustment in lieu of filing additional appeals to the Office of Hearings and Appeals, Department of the Interior.

(4) Where the rental schedule is used for cases falling under paragraphs (2) and (3) above, the annual rental adjustment shall be applied in determining prior year's rental.

The final rulemaking has adopted the concept of the proposed rulemaking on this point.

Competitive Bidding

Determining fair market value rental through a competitive bidding process is a method used not only in the proposed rulemaking by both private and governmental institutions. The Bureau of Land Management has and is currently using such a method for rights-of-way, principally for wind generation sites. The proposed and final rulemakings provide a procedure under which the authorized officer will, after considering the specific conditions for that case, make a determination on whether to use the competitive bidding procedure. The procedure provided in the proposed and final rulemakings would continue existing Bureau policy and be used only for site type right-of-way grants such as wind farms and communication sites.

While several of the comments supported this provision of the proposed rulemaking, a number of the comments objected to it because of their view that is could be applied to electrical transmission or similar linear facilities. The final rulemaking has adopted a clarifying change that limits its application to site grants.

Other comments objected to the proposed rulemaking because of their view that its provisions could be interpreted to require competitive bidding for all site facilities, including a communication site needed by a holder of a linear grant for the operation of that linear facility. It is extremely unlikely that an application for a site right-of-way grant for a facility related to a linear grant would be subject to a decision to use the competitive bidding system because the Bureau would normally give a preference to the holder of the linear right-of-way for the needed site. Therefore, the final rulemaking has adopted a change in this provision of the proposed rulemaking that clarifies the point that the holder of a linear right-of-way grant requiring a related right-of-way site will not be required to bid competitively for that site.

One of the comments suggested that final rulemaking should require the successful bidder for a competitively offered right-of-way to state under oath that the site will be used for the purpose set forth in the application. That comment went on to suggest that the final rulemaking should provide that the rental fee for the grant, if such fee is based on a percentage of production, would not be raised during the initial period of the grant. Existing regulations and Bureau of Land Management procedures are adequate to cover the first issue raised by this comment, while the second issue will be covered by the terms and conditions of the right-of-way grant. The final rulemaking has not adopted these suggestions.

The final rulemaking has adopted the provisions of the proposed rulemaking covering competitive bidding with only minor clarification changes.

Needed editorial, technical and grammatical changes have been made by the final rulemaking.

The principal author of this final rulemaking is Theodore Bingham, Division of Rights-Of-Way, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will not, when the rental payments for all rights-of-way grants and temporary use permits are considered, substantially increase the payments made by holders/permittees.

The changes made by the final rulemaking should make the rental procedures used by the Bureau of Land Management more efficient and equitable, while more accurately assessing receipt of fair market value. The changes made by this final rulemaking will be equally applicable to all entities that receive right-of-way grants or temporary use permits from the Bureau of Land Management for use of Federal lands for such right-of-way purposes.

There are no additional information collection requirements in this final rulemaking requiring approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2800

Administrative practice and procedure, Communications, Electric power, Highways and roads, Pipelines, Public lands—rights-of-way.

43 CFR Part 2880

Administrative practice and procedure, Common carriers, Oil and gas industry, Pipelines, Public lands—rights-of-way.

Under the authority of title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771) and section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Parts 2800 and 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

May 1, 1987.

PART 2800—[AMENDED]

1. The authority citation for Part 2800 continues to read:

Authority: 43 U.S.C. 1761–1771.

2. Section 2803.1–2 is revised to read:

§ 2803.1–2 Rental.

(a) The holder of a right-of-way grant or temporary use permit shall pay annually, in advance, except as provided in paragraph (b) of this section, the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. Annual rent billing periods shall be set or adjusted to coincide with the calendar year (January 1 through December 31) by proration on the basis of 12 months; the initial month shall not be counted for right-of-way grants or temporary use permits having an anniversary date of the 15th or later in the month and the terminal month shall not be counted if the termination date is the 14th or earlier in the month. Rental shall be determined in accordance with the provisions of paragraph (c) of this section; provided, however, that the minimum rental under paragaph (c)(1) shall not be less than the annual payment required by the schedule for 1 acre; provided, further, that in those instances where the annual payment is

$100 or less, the authorized officer may require an advance lump sum payment for 5 years.

(b)(1) No rental shall be collected where:

(i) The holder is a Federal, State or local government or agency or instrumentality thereof, except municipal utilities and cooperatives whose principal source of revenue is customer charges:

(ii) The right-of-way was issued pursuant to a statute that did not or does not require the payment of rental; or

(iii) The facilities constructed on a site or linear right-of-way are or were financed in whole or in part under the Rural Electrification Act of 1936, as amended, or are extensions from such Rural Electrification Act financed facilities.

(2) The authorized officer may reduce or waive the rental payment under the following instances:

(i) The holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise;

(ii) The holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary;

(iii) The holder holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under part 2880 of this title; and:

(A) Needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; or

(B) Needs a right-of-way across the public lands outside the permit, lease, license or contract area in order to reach said area;

(iv) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental; and

(v) A right-of-way involves a cost share road or reciprocal right-of-way agreement not subject to part 2812 of this title. Any fair market value rental required to be paid under this paragraph (b)(2)(v) shall be determined by the proportion of use.

(c)(1)(i) Except for those linear right-of-way grants or temporary use permits that the authorized officer determines under paragraph (c)(1)(v) of this section to require an individual appraisal, an applicant shall, prior to the issuance of a linear right-of-way grant or temporary use permit, submit an annual rental payment in advance for such right-of-way grant or temporary use permit in accordance with the following schedule:

PER ACRE RENTAL FEE ZONE VALUE

Zone value	Oil and gas and other energy related pipelines, roads, ditches and canals	Electric transmission lines, telephone electric distribution, non-energy related pipelines, and other linear rights-of-way
$50	$2.56	$2.24
100	5.13	4.49
200	10.26	8.97
300	15.38	13.46
400	20.51	17.95
500	25.64	22.44
600	30.77	26.92
1,000	51.28	44.87

(The values are based on zone value × impact adjustment × interest rate (6.41—1-year Treasury Securities "Constant Maturity" rate for June 30, 1986. The rate will remain constant except as provided in subparagraphs (ii) and (iii) of this section.)

A per acre rental schedule by State, County, and type of linear right-of-way use, which will be updated annually, is available from any Bureau State or District office or may be obtained by writing: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

(ii) The schedule will be adjusted annually by multiplying the current year's rental per acre by the annual change, second quarter to the second quarter (June 30 to June 30), in the Gross National Product Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis.

(iii) At such times as the cumulative change in the index used in paragraph (c)(1)(ii) of this section exceeds 30 percent or the change in the 3-year average of the 1-year interest rate exceeds plus or minus 50 percent, the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures. Measurements shall be taken at the end of the second quarter (June 30) of the year beginning with calendar year 1986. The initial bases (June 30, 1986) for these two indexes are: Gross National Product Price Implicit Price Deflator Index was 114.0 and the 3-year average of the 1-year Treasury interest rate was 8.86%.

(iv) Rental for the ensuing calendar year for any single right-of-way grant or temporary use permit shall be the rental per acre from the current schedule times the number of acres embraced in the grant or permit, rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

(v) The authorized officer shall use the fee schedule unless the authorized officer determines:

(A) A substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10; and

(B) In the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal.

Once the rental for a right-of-way grant has been determined by use of the rental schedule, the provisions of this subparagraph shall not be used as a basis for removing it from the schedule.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder. The notice shall provide the reasons for making the right-of-way subject to the schedule.

(ii) Where the new annual rental exceeds $100 and is more than a 100 percent increase over the current rental, the amount of increase in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3-year period.

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the schedule set out above in this paragraph, including those determined by the authorized officer to require an individual appraisal under paragraph (c)(1)(v) of this section. And for non-linear-right-of-way grants and temporary use permits (e.g., communications sites, reservoir sites, plant sites and storage sites) shall be determined by the authorized officer and paid annually in advance. Said rental shall be based on either a market survey of comparable rentals, or on a value determination for specific parcels or groups of parcels unless such rental is

reduced or waived as provided in paragraph (b) of this section. All such rental determinations shall be prepared to the standards and format described in the Uniform Appraisal Standards for Federal Land Acquisition (Department of Justice publication) and/or in certain cases as required by the Bureau's Appraisal manual (9300). Where the authorized officer determines that a competitive interest exists for site type right-of-way grants such as wind farms, communications sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1–3 of this title.

(ii) To expedite the processing of any grant or permit covered by paragraph (c)(3) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit shall be adjusted according to the final fair market rental value determination.

(4) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(5) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(d) If the rental required by this section is not paid when due, and such default for nonpayment default continues for 30 days after notice, action may be taken to terminate the right-of-way grant or temporary use permit. After default has occurred, no structures, buildings or other equipment may be removed from the subservient lands except upon written permission from the authorized officer.

3. Sections 2803.1–3 and 2803.1–4 are redesignated §§ 2803.1–4 and 2803.1–5, respectively.

4. A new § 2803.1–3 is added to read:

§ 2803.1–3 Competitive bidding.

(a) The authorized officer may identify and offer public lands for competitive right-of-way use either on his/her own motion or as a result of nomination by the public. Competitive bidding shall be used only for site-type right-of-way grants such as wind farms and communication sites. The authorized officer shall give public notice of such decision through publication of a notice of realty action as provided in paragraph (c)(1) of this section. The decision to offer public lands for competitive right-of-way use shall conform to the requirements of the Bureau's land use planning process. The authorized officer shall not offer public lands for competitive right-of-way use where equities such as prior or related use of said lands warrant issuance of a noncompetitive right-of-way grant(s).

(b) A right-of-way grant issued pursuant to a competitive offer shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(c) The offering of public lands for right-of-way use under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A notice of realty action indicating the availability of public lands for competitive right-of-way offering shall be published in the **Federal Register** and at least once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized officer may determine. The successful qualified bidder shall, prior to the issuance of the right-of-way grant, pay his/her proportionate share of the total cost of publication.

(ii) The notice of realty action shall include the use proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the grant(s), rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the notice of realty action, but no bids shall be accepted or rejected at that time. The right to reject any and all bids is reserved. Only those bids received by the close of business on the day prior to the bid opening or at such other time stated in the notice of realty action and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft or cashier's check payable in U.S. currency and made payable to the Department of the Interior—Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice of realty action. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing unless another method is specified in the notice of realty action. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the grant form(s) shall be forwarded to the qualifying bidder for signing. The signed grant form(s) with the payment of the balance of the first year's rental and the publication costs shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the right-of-way grant(s).

(6) If the successful qualified bidder fails to execute the grant form(s) and pay the balance of the rental payment and the costs of publication within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited

§ 2803.6–3 [Amended]

5. Section 2803.6–3 is amended by removing from where it appears in the next to last sentence the phrase "plus any additional terms and conditions and any special stipulations that the authorized officer may impose" and adding at the end of the section a new sentence "The authorized officer may, at the time of approval of the assignment, modify or add bonding requirements."

6. Section 2803.6–4 is revised to read:

§ 2803.6–4 Reimbursement of costs for assignments.

(a) All filings for assignments, except as provided in paragraph (b) of this section, made pursuant to this section shall be accompanied by a non-refundable payment of $50 from the assignor. Exceptions for a nonrefundable payment for an assignment are the same as in § 2803.1 of this title.

(b) Where a holder assigns more than 1 right-of-way grant as a single action, the authorized officer may, due to economies of scale, set a nonrefundable fee of less than $50 per assignment.

PART 2880—[AMENDED]

7. The authority citation for Part 2880 continues to read:

Authority: 30 U.S.C. 185, unless otherwise noted.

§ 2881.1-1 [Amended]

8. Section 2881.1–1(g) is amended by removing the period at the end of the last sentence thereof and adding the phrase ", except that where a holder assigns more than 1 right-of-way grant as part of a single action, the authorized officer, due to economies of scale, may set a fee of less than $50 per assignment."

§ 2881.2 [Amended]

9. Section 2881.2 is amended by removing paragraph (a)(2) in its entirety and redesignating the existing paragraphs (a) (3), (4), and (5) as paragraphs (a) (2), (3), and (4), respectively.

§ 2883.1-2 [Amended]

10. Section 2883.1–2 is amended by removing from where it appears the citation "§ 2803.1–2(c)" and replacing it with the citation "§ 2803.1–2(b)".

Linear Rights-of-Way Rental Schedule

Note.—The following schedule is printed for information and will not appear in Title 43 of the Code of Federal Regulations.

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Alabama: All counties	$20.51	$17.95
Arizona:		
Apache	5.13	4.49
Coconino, north of the Colorado River		
Cochise		
Gila		
Graham		
La Paz		
Mohave		
Navajo		
Pima		
Yavapai		
Yuma		
Coconino, south of the Colorado River	20.51	17.95
Greenlee		
Maricopa		
Pinal		
Santa Cruz		
Arkansas: All counties	15.38	13.46
California:		
Imperial	10.26	8.97
Inyo		
Lassen		
Modoc		
Riverside		
San Bernardino		
Siskiyou	15.38	13.46
Alameda	25.64	22.44
Alpine		
Amador		
Butte		
Calaveras		
Colusa		
Contra Costa		
Del Norte		
El Dorado		
Fresno		
Glenn		
Humbolt		
Kern		
Kings		
Lake		
Madera		
Mariposa		
Mendiocino		
Merced		
Mono		
Napa		
Nevada		
Placer		
Plumas		
Sacramento		
San Benito		
San Joaquin		
Santa Clara		
Shasta		
Sierra		
Solano		
Sonoma		
Stanislaus		
Sutter		
Tehama		
Toulumne		
Trinty		
Tulare		
Yolo		
Yuba		
Los Angeles	30.77	26.92
Marin		
Monterey		
Orange		
San Diego		
San Francisco		
San Luis Obispo		
San Mateo		
Santa Barbara		
Santa Cruz		
Ventura		
Colorado:		
Adams	5.13	4.49
Arapahoe		
Bent		
Cheyenne		
Crowley		
Elbert		
El Paso		
Huerfano		
Kiowa		
Kit Carson		
Lincoln		
Logan		
Moffat		
Montezuma		
Morgan		
Pueblo		
Phillips		
Sedgewick		
Washington		
Weld		
Yuma		
Baca	10.26	8.97
Dolores		
Garfield		
Las Animas		
Mesa		
Montrose		
Otero		
Prowers		
Rio Blanco		
Routt		
San Miguel		
Alamosa	20.15	17.95
Archuleta		
Boulder		
Chaffee		
Clear Creek		
Conejos		
Costilla		
Custer		
Delta		
Denver		
Douglas		
Eagle		
Fremont		
Gilpin		
Grand		
Gunnison		
Hinsdale		
Jackson		
Jefferson		
Lake		
La Plata		
Larimer		
Mineral		
Ouray		
Park		
Pitkin		
Rio Grande		
Saguache		
San Juan		
Summit		
Teller		
Connecticut: All counties	5.13	4.49
Delaware: All counties	5.13	4.49
Florida:		
Baker	30.77	26.92
Bay		
Bradford		
Calhoun		
Clay		
Columbia		
Dixie		
Duval		
Escambia		
Franklin		
Gadsden		
Gilchrist		
Gulf		
Hamilton		
Holmes		
Jackson		
Jefferson		
Lafayette		
Leon		
Liberty		
Madison		
Nassau		
Okaloosa		
Santa Rosa		
Suwannee		
Taylor		
Union		
Wakulla		
Walton		
Washington		
All other counties	51.28	44.87
Georgia: All counties	30.77	26.92
Idaho:		
Cassia	5.13	4.49
Gooding		
Jerome		
Lincoln		
Minidoka		
Oneida		
Owyhee		
Power		
Twin Falls		
Ada	15.38	13.46
Adams		
Bannock		
Bear Lake		
Benewah		
Bingham		
Blaine		
Boise		
Bonner		
Bonneville		
Boundary		
Butte		
Camas		

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Canyon		
Caribou		
Clark		
Clearwater		
Custer		
Elmore		
Franklin		
Fremont		
Gem		
Idaho		
Jefferson		
Kootenai		
Latah		
Lemhi		
Lewis		
Madison		
Nez Perce		
Payette		
Shoshone		
Teton		
Valley		
Washington		
Illinois: All counties	15.38	13.46
Indiana: All counties	25.64	22.44
Iowa: All counties	15.38	13.46
Kansas:		
Morton	10.26	8.97
All other counties	5.13	4.49
Kentucky: All counties	15.38	13.46
Louisiana: All counties	30.77	26.92
Maine: All counties	15.38	13.46
Maryland: All counties	5.13	4.49
Massachusetts: All counties	5.13	4.49
Michigan:		
Alger	15.38	13.46
Baraga		
Chippewa		
Delta		
Dickinson		
Gogebic		
Houghton		
Iron		
Keweenaw		
Luce		
Mackinac		
Marquette		
Menominee		
Ontonagon		
Schoolcraft		
All other counties	20.51	17.95
Minnesota: All counties	15.38	13.46
Mississippi: All counties	20.51	17.95
Missouri: All counties	15.38	13.46
Montana:		
Big Horn	5.13	4.49
Blaine		
Carter		
Cascade		
Chouteau		
Custer		
Daniels		
Dawson		
Fallon		
Fergus		
Garfield		
Glacier		
Golden Valley		
Hill		
Judith Basin		
Liberty		
McCone		
Meagher		
Musselshell		
Petroleum		
Phillips		
Pondera		
Powder River		
Prairie		
Richland		
Roosevelt		
Rosebud		
Sheridan		
Teton		
Toole		
Treasure		
Valley		
Wheatland		
Wibaux		
Yellowstone		
Beaverland	15.38	13.46
Broadwater		
Carbon		
Deer Lodge		
Flathead		
Gallatin		
Granite		
Jefferson		
Lake		
Lewis and Clark		
Lincoln		
Madison		
Mineral		
Missoula		
Park		
Powell		
Ravalli		
Sanders		
Silver Bow		
Stillwater		
Sweet Grass		
Nebraska: All counties	5.13	4.49
Nevada:		
Churchill	2.56	2.24
Clark		
Elko		
Esmeralda		
Eureka		
Humboldt		
Lander		
Lincoln		
Lyon		
Mineral		
Nye		
Pershing		
Washoe		
White Pine		
Carson City	25.64	22.44
Douglas		
Story		
New Hampshire: All counties	15.38	13.46
New Jersey: All counties	5.13	4.49
New Mexico:		
Chaves	5.13	4.49
Curry		
De Baca		
Dona Ana		
Eddy		
Grant		
Guadalupe		
Harding		
Hidalgo		
Lea		
Luna		
McKinley		
Otero		
Quay		
Rossevelt		
San Juan		
Socorro		
Torrence		
Rio Arriba	10.26	8.97
Sandoval		
Union		
Bernalillo	20.51	17.95
Catron		
Cibola		
Colfax		
Lincoln		
Los Alamos		
Mora		
San Miguel		
Santa Fe		
Sierra		
Taos		
Valencia		
New York: All counties	20.51	17.95
North Carolina: All counties	30.77	26.92
North Dakota: All counties	5.13	4.49
Ohio: All counties	20.51	17.95
Oklahoma:		
Beaver	10.26	8.97
Cimmaron		
Roger Mills		
Texas		
Le Flore	15.38	13.46
McCurtain		
All other counties	5.13	4.49
Oregon:		
Harney	5.13	4.49
Lake		
Malheur		
Baker	10.26	8.97
Crook		
Deschutes		
Gilliam		
Grant		
Jefferson		
Klamath		
Morrow		
Sherman		
Umatilla		
Union		
Wallowa		
Wasco		
Wheeler		
Coos	15.38	13.46
Curry		
Douglas		
Jackson		
Josephine		
Benton	20.51	17.95
Clackamas		
Clatsop		
Columbia		
Hood River		
Lane		
Lincoln		
Linn		
Marion		
Multnomah		
Polk		
Tillamook		
Washington		
Yamhill		
Pennsylvania: All counties	20.51	17.95
Puerto Rico: All	30.77	26.92
Rhode Island: All counties	5.13	4.49
South Carolina: All counties	30.77	26.92
South Dakota:		
Butte	15.38	13.46
Custer		
Fall River		
Lawrence		
Meade		
Pennington		
All other counties	5.13	4.49
Tennessee: All counties	20.51	17.95
Texas:		
Culberson	5.13	4.49
El Paso		
Hudspeth		
All other counties	30.77	26.92
Utah:		
Beaver	5.13	4.49
Box Elder		
Carbon		
Duchesne		
Emery		
Garfield		
Grand		
Iron		
Jaub		
Kane		
Millard		
San Juan		
Tooele		
Unitah		
Wayne		
Washington	10.16	8.97
Cache	15.38	13.46
Daggett		
Davis		
Morgan		
Piute		

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Rich		
Salt Lake		
Sanpete		
Sevier		
Summit		
Utah		
Wasatch		
Weber		
Vermont: All counties	20.51	17.95
Virginia: All counties	20.51	17.95
Washington:		
Adams	10.26	8.97
Asotin		
Benton		
Chelan		
Columbia		
Douglas		
Franklin		
Garfield		
Grant		
Kittitas		
Klickitat		
Lincoln		
Okanagan		
Spokane		
Walla Walla		
Whitman		

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Yakima		
Ferry	15.38	13.46
Pend Oreille		
Stevens		
Clallam	20.51	17.95
Clark		
Cowlitz		
Grays Harbor		
Island		
Jefferson		
King		
Kitsap		
Lewis		
Mason		
Pacific		
Pierce		
San Juan		
Skagit		
Skamania		
Snohomish		
Thurston		
Wahkiakum		
Whatcom		
West Virginia: All counties	20.51	17.95
Wisconsin: All counties	15.38	13.46
Wyoming:		
Albany	5.13	4.49

[Dollars/Acre/Year]

State and county	Oil and gas, other energy pipelines, roads, ditches, and canals	Electric lines, telephone lines, nonenergy pipelines, other linear rights-of-way
Big Horn		
Campbell		
Carbon		
Converse		
Fremont		
Goshen		
Johnson		
Laramie		
Lincoln		
Natrona		
Niobrara		
Platte		
Sheridan		
Sublette		
Sweetwater		
Uinta		
Washakie		
Crook	15.38	13.46
Hot Springs		
Park		
Weston		
Teton		

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